

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

DAVID MIMS, et al,)	
)	
Plaintiffs,)	
)	
vs.)	CASE NO.: 1:12-CV-244-VEH
)	
WAL-MART STORES, INC., et al,)	
)	
Defendants)	

PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY

COME NOW the Plaintiffs, by and through counsel, and file this Motion for Leave to File a Sur-Reply in Further Support of their Opposition to the Motion to Dismiss or Stay Claims filed by Defendant Kinderhook Capital Fund II, L.P. and Defendant Kinderhook Industries, LLC (hereinafter collectively the “Kinderhook Defendants”). In support of said Motion, Plaintiffs state as follows:

1. On October 22, 2012, the Kinderhook Defendants filed their Motion to Dismiss or Stay Plaintiffs’ claims against them.
2. On November 5, 2012, Plaintiffs filed their Response in Opposition to the Kinderhook Defendants’ Motion to Dismiss or Stay.
3. Yesterday, November 12, 2012, the Kinderhook Defendants filed their Reply in Further Support of the Disputed Motion to Dismiss or Stay (hereinafter the “Reply”). Plaintiffs submit that, in the Reply, the

Kinderhook Defendants have miscast Plaintiffs' arguments and misinterpreted relevant case law. Further, the Reply cites to an Order in a separate case involving the Kinderhook Defendants issued on November 6, 2012, after Plaintiffs had filed their Response in Opposition. In order to address these issues, Plaintiffs now request leave to file a Sur-Reply.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request this Honorable Court enter an Order affording Plaintiffs until Tuesday, November 20, 2012 to file a Sur-Reply in Further Support of their Opposition to the Kinderhook Defendants' Motion to Stay or Dismiss.¹

Respectfully submitted,

/s/ Glenda G. Cochran
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Attorney for Plaintiffs

¹Plaintiffs submit that because the Reply was filed yesterday, a national holiday, one week from today is a reasonable deadline for filing a Sur-Reply.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2012, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following:

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